

1. The Parties

The Complainants are Bajaj Finserv Ltd. and Bajaj Finance Ltd. of Pune, India represented in these proceedings by Ms. Divya Balasundaram of Inventure IP of New Delhi, India. The Respondent is Ram Kumar of Mumbai India.

2. The Domain name, Registrar and Policy

The present Arbitration proceeding pertains to a dispute regarding the domain name <bajajfinservonline.co.in> (hereinafter referred to as the disputed domain name). The registrar for the disputed domain name is Endurance Domains Technology LLP Pvt. Ltd. The Arbitration proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the .IN Domain Name Dispute Resolution Policy (the “INDRP Policy” or “Policy”), and the INDRP Rules of Procedure (the “Rules”).

3. Procedural History

The sole arbitrator appointed in the case is Mrs. Harini Narayanswamy. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, in compliance with the Rules. The Arbitrator received the Complaint from the .IN Registry on February 24, 2018 and on the same day communicated by email, a notification of commencement of the arbitration proceedings to the Respondent. Under the INDRP Rules, copies of the said notification were sent to other interested parties to the dispute. The Respondent was given three weeks from the date of the notification to file a response. The Respondent did not submit a response in the proceedings.

Factual Background

The Complainants are in the business of providing financial services and in allied business areas. They own the trademark BAJAJ FINSERV and have trademark

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registration for the mark BAJAJ FINSERV under class 36, bearing number 1827471, dated June 10, 2009 for insurance, financial, monetary and services under class 36.

The Respondent registered the disputed domain name on August 5, 2017. The registration record of the disputed domain name indicates, that the Respondent has not provided complete address details.

The Parties Contentions

A. Complainant's Submissions

The Complainants state they are part of the Bajaj Group, founded in 1926 by Shri Jamnalal Bajaj, an industrialist, philanthropist and freedom fighter. The Complainants submit that the Bajaj Group presently has twenty-four companies, six of which are listed. The Complainants further state that the Second Complainant is a reputed Non Banking Finance Institution that provides finance to eligible retail, corporate and rural customers.

The Complainants state that they own several registered trademarks for the marks BAJAJ FINSERV, FINSERV, B logo, B FINSERV, BAJAJ FINSERV LOANS among others. The trademarks are registered in the name of the First Complainant and the Second Complainant is an authorized user of these trademarks. The Complainants have filed copies of some trademark registration certificates as evidence.

The Complainants state that along with other companies in its group, they own several domain names containing the BAJAJ FINSERV mark, such as <bajajfinserv.in>, <bajajfinserv.biz>, <bajajfinserv.mobi>, <bajajfinserv.org>, <bajajfinserv.tel>, and <bajajfinserv.name>. The Complainants add that the domain name <bajajfinserv.in> is registered in the name of the Second Complainant. The Complainants further state that the Second Complainant's consumer durable lending business is spread across three hundred cities, and has 14,100 dealer counters, 600 branches across the country and employs about 12,000 persons. It has joint venture arrangements with Allianz SE of

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Germany, and operates general and life insurance business under the names Bajaj Allianz Life Insurance Company Limited and Bajaj Allianz General Insurance Company Limited.

The Complainants state that its website www.bajajfinserv.in prominently features its BAJAJ FINSERV mark and provides information about its business. The portal provides its customers information about their policy status, and it is used by them for payment of online premiums and repayment of loans. Extracts from the website are filed as evidence.

The Complainants state that the gross profit of the Second Complainant for the financial year 2016-17 increased by 43 % over the previous year. The Complainants state that the Second Complainant has invested substantially in advertising and promoting the BAJAJ FINSERV mark, and an amount of Rupees 67.07 Crores was spent during the financial year 2016-17 towards this. The Complainants add that advertisements for BAJAJ FINSERV have appeared in magazines and news papers and it has also received unsolicited attention from the media. The Complainants state that the Second Complainant was ranked as 119 among “The Economic Times 500”, and has received several awards, some of these are: i) Best Employer, AON Best Employers, INDIA 2017 ii) TISS Leap Vault CLO GOLD Shield, 2016, won by Human Resource Department in best simulation based program for its “Super Manager Studio Online and Offline Training Program” (iii) Best Audit Committee Award, 2016, by Asian Center for Corporate Governance and Sustainability in January 2017. The Complainants state that new loans booked by the Second Complainant in the financial year 2017 exceeded 10 million, and assets under management and total income grew by thirty-six percent.

The Complainants claim that since there is sufficient evidence to show their statutory and common law rights in the BAJAJ FINSERV mark, it is a “well-known mark” and is entitled to such protection. The Complainants state that the First Complainant came to know of the disputed domain name in September 2017 and had sent an email notice to the Respondent on November 9, 2017, to which there was no response.

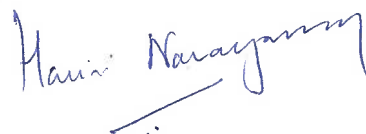
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The Complainants argue that the disputed domain name is identical or confusingly similar to its mark, as it incorporates the mark in its entirety. The Complainants further argue that the addition of the word “online” and the ccTLD does not diminish the confusing similarity of the disputed domain name with the Complainant’s mark.

The Complainants contend that the Respondent has no rights or legitimate interests in disputed domain name for reasons that the Respondent is not commonly known by the disputed domain name and does not use it for a *bona fide* offering of goods or services, or for any legitimate non-commercial purpose or for fair use purposes. The Complainants add that the Respondent has no authorization to use its trademark.

The Complainants argue that the disputed domain name was registered in bad faith as the mark is well-known and the Respondent ought to have constructive notice of the mark being a resident in Maharashtra, the same state where the Complainants are located. Furthermore, the disputed domain name was registered ten years after the Second Complainant registered the domain name <bajafinserve.in> in 2007. The Respondent’s use of an identical spelling, “finserv” in the disputed domain name, where “serv” is not a dictionary spelling of “serve” or “service”, indicates opportunistic bad faith registration. The Complainants state that the Respondent had actual notice of Complainant’s rights in the mark, as a notice was sent by the First Complainant to the Respondent.

The Complainants argue that the disputed domain name is registered to cause confusion and to derive gain from the fame associated with its mark and it blocks the Complainants from registering the domain name. The Complainants further argue that when the disputed domain name was registered, the Respondent failed to provide a correct address and has disregarded the Complainant’s pre-existing rights in the mark, and thereby violated paragraph 3(b) of the INDRP Policy. The Complainants request for the transfer of the disputed domain name to the Second Complainant.

Handwritten signature of Haini Narayann in blue ink.

Discussion and Findings

Under the INDRP Policy, the Complainants have to establish the following three elements to succeed in the proceedings:

- (i) The disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainants have rights, and
- (ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered or is being used in bad faith.

Identical or Confusingly Similar

The first element requires the Complainants to prove that the disputed domain name is identical or confusingly similar to a mark in which the Complainants have rights.

The Arbitrator finds that the Complainants have filed evidence of their rights in the BAJAJ FINSERV mark. Such evidence includes copies of registered trademarks for the BAJAJ FINSERV mark in class 36 bearing number 1827471, dated June 10, 2009 and BAJAJ FINSERV LOANS in class 36 bearing number 1992366, dated July 13, 2010. On the basis of this evidence, as trademark registration is considered *prima facie* evidence of rights in a mark, the Arbitrator finds the Complainants have established their rights in the trademark BAJAJ FINSERV and its formative mark BAJAJ FINSERV LOANS.

The disputed domain name contains the trademark BAJAJ FINSERV in its entirety. The word “online” with the mark, does not change the overall impression that the essential part of the the disputed domain name is the BAJAJ FINSERV trademark. It is well established that merely adding words to the trademark in a disputed domain name, does not lessen the confusing similarity of the disputed domain name to the registered mark of a complainant. See for instance, *Indeed Inc. v. Josh Mathews* INDRP Case no. 948 where it was found that the disputed domain name in that case <indeedjob.co.in>, which

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combined the trademark INDEED with the word “job”, did not prevent a finding of confusing similarity of the disputed domain name with the complainant’s mark. In the present case, the disputed domain name incorporates the Complainant’s BAJAJ FINSERV mark in its entirety. The Arbitrator finds the word “online” with the BAJAJ FINSERV trademark does not lessen the confusing similarity, as the trademark is the dominant part of the disputed domain name.

The Arbitrator accordingly finds that the disputed domain name is confusingly similar to the Complainant’s trademark. The Complainants have therefore successfully established the first requirement under paragraph 4 of the Policy.

Rights and Legitimate Interests

The second element requires the Complainant to put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The overall burden of proving rights or legitimate interest, however rests with the Respondent. If the Respondent fails to come forward with relevant evidence to prove rights and legitimate interest in the disputed domain name, and if the Complainants have made a *prima facie*, then the Complainants prevails.

The Complainants have argued that the Respondent has no rights or legitimate interests in the disputed domain name, as the Respondent is not known by the disputed domain name, and is not making any *bona fide* offering of goods or services using the disputed domain or any other legitimate use, such as fair use of the trademark. The Complainant has also unequivocally submitted that the Respondent has no authorization to use its mark or any other rights and interests connected with the term “Bajaj Finserv”. The Respondent has not replied or responded in these proceedings and has therefore not rebutted the allegations made by the Complainant.

The INDRP Policy states that the Respondent can demonstrate legitimate interests in the disputed domain name if there are circumstances that show (i) that before notice of the

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dispute, the respondent had used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services or (ii) the respondent (as an individual, business organization) has been commonly known by the domain name, or (iii) The respondent is making legitimate, non-commercial or fair use of the domain name without intent for commercial gain. The Arbitrator finds there is no evidence on record to show any preparations are made by the Respondent to use the disputed domain name in connection with a *bona fide* offering of goods or services or that the Respondent has been commonly known by the disputed domain name or makes any legitimate non-commercial fair use of the disputed domain name or any other material that shows any rights or legitimate interest in favor of the Respondent.

Under these circumstance, it is reasonable to infer that the registration of a domain name incorporating a known mark is an indication of the Respondent's intention to ride upon the goodwill and reputation attached to the BAJAJ FINSERV trademark. Accordingly, on the basis of the evidence and the circumstances discussed, it is found that the Complainant's un rebutted submissions prevail.

The Complainants have successfully made a *prima facie* case that the Respondent lacks rights and legitimate interests in the disputed domain name. The second requirement under paragraph 4 of the Policy has been met.

Bad Faith

The third element of Policy requires the Complainant to establish the disputed domain name was registered in bad faith or is being used in bad faith. Under the INDRP Policy, it is sufficient if a complainant establishes either bad faith registration or bad faith use of the disputed domain name. The Complainant in the present case has alleged that the disputed domain name has been registered in bad faith

The Arbitrator finds from the Complainants submissions that: (i) The Complainants have established that they have adopted the trademark BAJAJ FINSERV and have used it

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extensively for a considerable length of time in commerce. Evidence of such extensive use of the mark submitted by the Complainants, show that the trademark is associated with the Complainants and their business. (ii) The disputed domain name has been registered almost a decade after the Complainant's continuous use of the mark in commerce. (iii) The Respondent's intention of targeting the BAJAJ FINSERV trademark, as submitted by the Complainants, is evident from the use of the term "serv", which is not the known spelling for the word "service" or "serve", but is a coined misspelling that is adopted and used by the Complainants in its trademark and is associated with the Complainant's business.

It is well established under the INDRP Policy that targeting the trademark and using it in a disputed domain name is considered bad faith registration and use under the Policy. See *Monster.com(India) Ltd. v Domain Leasing Company*. (<monster.in>) INDRP Case 2 (May 20, 2006) where the learned Arbitrator has observed that "A domain name is more than a mere Internet address. It is an identifier, it often identifies the Internet site to those who reach it and sends a message that the site is owned by, sponsored by, affiliated with or endorsed by the person with the name, or owning the trademark, reflected in the domain name."

The Arbitrator finds from the entire circumstances and facts in the present case, that it is inconceivable that the Respondent has registered the disputed domain name for any legitimate use. The use of the trademark by the Respondent, who apparently has no connection with the Complainants, indicates that the disputed domain name ought to have been registered for the purpose of deriving some gain from the association with the trademark. Registration of a domain name that incorporates a well-known mark by an entity that has no relationship to the mark is considered evidence of bad faith under the Policy. See *The Ritz Carlton Hotel Company LLC Brands Inc. v. Nelton! Brands Inc.*, INDRP Case / 250 (December 30, 2011) where bad faith registration or use of the disputed domain name was found.

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On balance, the Arbitrator finds from the circumstances and the evidence on record that there is no conceivable reason for the Respondent to register the disputed domain name except to gain from the association with the Complainant's mark. Under circumstances discussed, that the Respondent ought to have deliberately registered the disputed domain name with the Complainant's trademark in mind for the purpose of exploiting it in some manner, which is recognized as bad faith registration under the Policy.

Based on the material on record, and the discussed facts and circumstances, the Arbitrator finds the Complainants have established that the disputed domain name has been registered in bad faith. Accordingly, it is found that the requirements under paragraph 4 of the Policy has been satisfied by the Complainants for obtaining the transfer of the disputed domain name.

Decision

In light of all that has been discussed, it is ordered that the disputed domain name <bajajfinservonline.co.in> be transferred to the Second Complainant, Bajaj Finance Ltd.



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(Arbitrator)

Date: April 22, 2018